



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCO/142868

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration (MECA) alleging an overissuance of child care, a hearing was held on October 25, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Keisha Love
MECA
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a notice dated July 10, 2012 that informed Petitioner that she had been overissued child care benefits in the amount of \$855.00 for the time period of January 29, 2012 through February 29, 2012.
3. Petitioner was involved in an incident at her workplace that led to a suspension while her employer investigated the matter to determine what happened. This was on or about January 27,

2012. Ultimately her employment was terminated; she received her last check in mid-February. She then began receiving unemployment compensation.

4. Petitioner reported the circumstances noted at Finding # 3 to the agency on March 1, 2012.
5. At some point in late February Petitioner began attending classes at the Milwaukee Area Technical College.
6. The amount paid for child care by the Wisconsin Shares Child Care Program is not disputed.

DISCUSSION

The Wisconsin Statutes, at §49.195(3), state the following:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in the Wisconsin Statutes, at §49.155; thus they are within the purview of §49.195(3). Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code*. *Wis. Admin. Code*, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment or whose error caused the overpayment. *Wis. Admin. Code*, § DCF 101.23(1) (g). *Admin. Code*. Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual)*, §2.3.1.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

All parents must be participating in an approved activity in order to receive child care assistance. *Wisconsin Shares Child Care Assistance Manual (Manual)*, §1.4.8. If there are changes to an approved activity that can change eligibility, these changes must be reported:

1.15.0 On Going Eligibility

1.15.1 Reporting Requirements

Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10 days of the change.

Reporting on ACCESS meets program requirements for reporting changes if timelines are met.

1.15.2 Examples of Required Information to be Reported

Examples of some of the information that parents are required to report include:

- A change in the scheduled approved activity hours
- A change in monthly income if it increases by at least \$250 or decreases \$100 or more or any increases that raise gross income above 200% of FPL.
- A change in approved activity status (starting or ending an activity)
- A change in their Assistance Group composition.

Manual, §§1.15.1 and 1.15.2.

Here Petitioner argues that she was still technically employed as of January 29, 2012. Nonetheless, Petitioner was not actually working and certainly had a change in approved activity hours. This required change was not reported to the agency until March 1, 2012. I also note, to the extent that it may be involved here, that while it is not precisely clear as to the date that Petitioner began attending classes, education is only an approved activity in specifically prescribed circumstances and the agency should have been notified so as to make that determination. *See Manual, §1.5.7.*

I am, therefore, sustaining the overpayment alleged here.

CONCLUSIONS OF LAW

That the evidence is sufficient to demonstrate that Petitioner was overpaid child care benefits in the amount of \$855.00 for the period from for the time period of January 29, 2012 through February 29, 2012.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

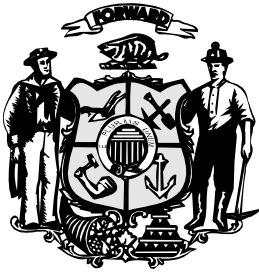
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of November, 2012

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 30, 2012.

Milwaukee Early Care Administration
Public Assistance Collection Unit
Child Care Fraud